Court No.2

Civil Writ Petition No. 724 (M/S) of 2002.

M/s Ahemed Hussain Quaiser Hussain
and four others. …… Petitioners.

Versus

District Judge, Almora and another …….. Respondents.

……..

Hon'ble P.C. Verma, J.

Heard Sri S.G. Hasnain and Sri A.K. Sharma, learned counsel for the petitioners.

A suit for recovery was filed by the respondent -Nainital Bank Ltd. Almora, against the petitioners, which was partly allowed on 30.4.1986 by the trial court. The Bank, being not satisfied with the part dismissal of the suit, filed an appeal before the District Judge. The District Judge allowed the appeal and directed the trail court for re-calculation, settlement and recovery of the amount. The trail court calculated the amount alongwith the interest. The Bank was not satisfied about the rate of interest and filed a revision before the District Judge. The revision filed by the Bank claiming penal interest has been allowed by the District judge on 27.7.2002 which has been impugned in this writ petition.

The learned counsel for the petitioners has assailed the judgment of the learned District Judge passed in the revision on the ground that in the appeal the simple interest was allowed to be charged. Therefore, in the revision the District Judge could not have imposed the penal interest on the petitioners. The power of the revision has been conferred to be at par with the power of appeal.

It has been held by the apex Court in the case of Shankar Ramchandra Abhyankar versus Krishnaji Dattatreya Bapa, reported in (1969) 2 SCC 74 that,

"revisional jurisdiction partakes the appellate jurisdiction of a superior court. The right of appeal is one of entering a superior court and invoking its aid and interposition to redress the error of the court below. Two things which are required to constitute appellate jurisdiction are: the existence of the relation of superior and inferior court and the power on the part of the former to review decisions of the latter. When the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Subject to limitations placed on the exercise of revisional jurisdiction, it remains a part of the general appellate jurisdiction of a superior court in a wider and larger sense."

In the case of Major S.S.Khanna versus Brig. F.J. Dhillon, reported in (1964) 4 SCR 409, the apex Court further held that,

"when revisional jurisdiction is exercised in relation to a "case", it can also be exercised in relation to a part of a case. Hidayatullah, J. (as His Lordship then was), in his separate concurring opinion, compared the revisional jurisdiction of the High Court with the jurisdiction to issue a writ of certiorari and held that the revisional jurisdiction is clearly in the nature of a proceeding on a writ of certiorari though His Lordship also pointed out the essential differences between the two powers. However, His Lordship clearly opined that the revisional jurisdiction is conferred to keep the subordinate courts within the bounds of their jurisdiction and once a flaw of jurisdiction is found the High Court exercising revisional jurisdiction need not quash and remit as is the practice in English law under the writ of certiorari but can itself pass such as it think fit.

In the case of Babulal Nagar versus Shree Synthetics Ltd., reported in 1984 Supp. SCC 128 the apex Court further held that,

"once a jurisdiction is conferred to examine the propriety or impropriety of the order, the jurisdiction is wide. One meaning assigned to expression "propriety" is "justice". A jurisdiction to examine the propriety of the order or decision carries with it the same jurisdiction as the original authority to come to a different conclusion on the said set of facts. If any other view is taken, the expression "propriety" would lose its significance".

Since the District Judge has passed both the orders, therefore he was competent to impose the penal interest as has been directed. The District Judge has given cogent reason for imposing penal interest. In my opinion, the judgment of the District Judge does not suffer from any illegality, perversity or miscarriage of justice. Therefore, no interference is called for in the impugned order under Article 227 of the Constitution.

The petition is dismissed. No order as to costs.

(P.C. Verma, J.)

26.09.2002
P.Singh